

**Nursing and Midwifery Council  
Fitness to Practise Committee**

**Substantive Hearing  
Monday 5 January – Friday 9 January 2026**

Virtual Hearing

<b>Name of Registrant:</b>	Deirdre Mary Kathleen Byrne
<b>NMC PIN:</b>	08A0186S
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing – (December 2010)
<b>Relevant Location:</b>	Fife
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	John Kelly (Chair, Lay member) Diane Gow (Registrant member) Jane McLeod (Lay member)
<b>Legal Assessor:</b>	Graeme Henderson
<b>Hearings Coordinator:</b>	Emma Hotston
<b>Nursing and Midwifery Council:</b>	Represented by Yusuf Segovia, Case Presenter
<b>Miss Byrne:</b>	Not present and unrepresented
<b>Facts proved:</b>	Charges 1, 2, 3c
<b>Facts not proved:</b>	Charges 3a, 3b
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Byrne would not be attending, and that the Notice of Hearing letter was sent to Miss Byrne's registered email address by secure email on 5 December 2025.

Mr Segovia, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Byrne's right to attend remotely, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Byrne has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Miss Byrne**

The panel next considered whether it should proceed in the absence of Miss Byrne. The panel had regard to Rule 21 and heard the submissions of Mr Segovia who invited the panel to continue in the absence of Miss Byrne. He submitted that Miss Byrne had voluntarily absented herself.

Mr Segovia submitted that in an email sent by Miss Byrne to the NMC on 24 December 2025, she stated that she will not be attending the hearing. As a consequence, there was

no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Miss Byrne. In reaching this decision, the panel considered the submissions of Mr Segovia, and the advice of the legal assessor. It had regard to the factors set out in the decision of *R v Jones* [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Byrne;
- Miss Byrne sent an email to the NMC on 24 December 2025 to state that she will not be attending the hearing;
- Miss Byrne has informed the NMC that she has received the Notice of Hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have attended today to give live evidence and two others are due to attend during the course of the hearing this week;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Byrne in proceeding in her absence. The evidence upon which the NMC relies was sent to her at her registered address. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can

make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies.

Furthermore, the limited disadvantage is the consequence of Miss Byrne's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel determined that it is fair to proceed in the absence of Miss Byrne. The panel will draw no adverse inference from Miss Byrne's absence in its findings of fact.

### **Specification of the Charges**

At the outset of the hearing the chair, on behalf of the panel, raised the issue of specification. It was pointed out that no dates, or time-frames were supplied, identifying when events were said to have taken place.

Mr Segovia informed the panel that the NMC had confined its time-frame to when Miss Byrne was working at the Home and that this was sufficient at this stage.

The panel heard and accepted the advice of the legal assessor. The issue which was raised was one of latitude. In the preamble to the charge, it was made clear that the events that had been said to have occurred took place when she was employed at a particular home. The issue raised involved an issue of the reliability of the witnesses. They were not expected to remember a particular date, but vagueness may involve a reliability issue.

The panel considered that it would revisit this issue at the facts stage.

### **Details of charge**

That you, a registered nurse whilst working at The Home:

1. On dates unknown, referred to Resident A as a 'dirty bastard' or words to that effect on one or more occasions.
2. On a date unknown, mocked one of the effects of Resident B's health condition.
3. Your actions at charge 1 and/or 2 were:
  - a. degrading and/or
  - b. humiliating and/or
  - c. offensive

And in light of the above, your fitness to practise is impaired by reason of your misconduct.

### **Possible admissions**

Following the reading of the charge, Mr Segovia invited the panel to consider whether or not the contents of an email, from Miss Byrne, dated 10 April 2025 could be construed as an admission of the charges. He conceded that it could not be certain that what Miss Byrne was referring to was referable to the charge as it was currently framed.

The panel heard and accepted the advice of the legal assessor.

The panel did not consider that it would be fair to treat the contents of the email dated 10 April 2025 as an unequivocal admission to Charge 1. Whilst Miss Byrne stated that she admitted the first allegation, it was by no means clear what that allegation was. The panel also noted that, in commenting upon the second allegation, there was reference to two witness statements. There is only one witness to the second charge as currently framed.

In these circumstances the panel determined that there were no clear admissions and that the NMC should prove its case.

### **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Mr Segovia under Rule 31 to adduce an NMC witness statement from Witness 3, dated 28 November 2024, and the exhibited local statement, dated 23 March 2023, into evidence as hearsay.

Mr Segovia submitted that in her NMC witness statement, Witness 3 states that she began her employment at the Home in 2015. Witness 3's employment period would cover the full scope of Miss Byrnes' period of employment at the Home. Mr Segovia submitted that the NMC has taken reasonable steps to secure the attendance of Witness 3, however this witness had not responded that day to the NMC's attempts to contact her by phone and email.

Mr Segovia submitted that the content of the NMC witness statement and local statement from Witness 3 are not the sole or decisive evidence in relation to Charge 1, as Witness 2 provides evidence on the same charge. The panel was due to hear oral evidence from Witness 3 in relation to Charge 1. Miss Byrne had also seen these documents and had not commented on them.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included reference to Rule 31 of the NMC Fitness to Practise rules 2004 and the principles contained in the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin), which comments on Rule 31, in particular, the issue of relevance and fairness. The Rule states that subject only to the requirements of relevance and fairness, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel noted that it had not been provided with a specific explanation for the absence of Witness 3. The panel was informed that the witness had been in contact with the NMC the day before and explained that she was too ill to provide evidence that day. However, the NMC had been unable to contact her, by telephone, the following day.

The panel recognised that admitting evidence of hearsay is not a routine matter and should be approached with caution. Having regard to the evidence subject of this application, it concluded that it is relevant to the facts in this case, going directly to Charge 1 and Charge 3.

Having concluded it was relevant to admit this evidence, the panel went on to consider whether admitting this evidence would be fair in the circumstances and bore mind that Miss Byrne is neither present nor represented at this hearing.

The panel accepted Mr Segovia's submission that the evidence of Witness 3 is not sole or decisive evidence in relation to the relevant charges in this case. The panel has evidence from Witness 2 relating to the same charges.

Miss Byrne is not present and is therefore unable to challenge the evidence of Witness 2. However, the panel noted that despite correspondence between the NMC and Miss Byrne, no objection or indication of a challenge was raised by Miss Byrne.

There is no indication that Witness 3 had any motivation to fabricate or embellish the accounts set out in the NMC witness statement or local statement subject of this application. The panel recognise that this is a serious case involving alleged repeated poor conduct in relation to vulnerable residents and, in the circumstances, could have serious implications for Miss Byrne's career.

The panel took into account that there is no clear reason for Witness 3's non-attendance at this hearing. The witness was due to attend at the outset and the panel heard that she was initially unwell but later disengaged and did not answer emails or telephone calls.

However, in the circumstances, the panel was satisfied that the NMC had taken all reasonable steps to secure Witness 3's attendance.

Given that Witness 3 was due to attend to give live evidence at this hearing, it is evident that Miss Byrne did not have prior notice of this application. However, she did have notice of the evidence itself in advance of the hearing.

The panel noted that Witness 3 did not provide identical evidence to that of Witness 2 and, on one view, may be seen to contradict the frequency with which the expression in Charge 1 was allegedly used.

In balancing all of these factors, the panel concluded that it is fair to admit the evidence of Witness 3 as hearsay. The weight to be given to that evidence will be a matter for the panel to consider in its deliberations.

In light of the above, the application to admit the NMC witness statement and local statement from Witness 3 as hearsay evidence was granted.

## **Background**

Miss Byrne was referred to the Nursing and Midwifery Council (NMC) on 25 March 2023 by (PRIVATE) ("the Home"). This referral resulted in an investigation by the NMC.

The regulatory concerns raised relate to Miss Byrne allegedly using degrading, humiliating and/or offensive language by referring to Resident A as a 'dirty bastard' or words to that effect on one or more occasions, in addition to mocking one of the effects of Resident B's health condition.

These regulatory concerns relate to incidents that took place at the Home whilst Miss Byrne was working as a registered nurse.

## **Decision and reasons on facts**

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Segovia on behalf of the NMC.

The panel drew no adverse inference from the non-attendance of Miss Byrne.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Home Manager, (PRIVATE) ("the Home") at the material time.
- Witness 2: Nursing Auxiliary, (PRIVATE) ("the Home") at the material time.
- Witness 4: Healthcare Assistant, (PRIVATE) ("the Home") at the material time.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel then considered each of the disputed charges and made the following findings.

### **Charge 1**

"That you, a registered nurse, whilst working at the Home:

- 1) On dates unknown, referred to Resident A as a 'dirty bastard' or words to that effect on one or more occasions."

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and written evidence from Witness 2 and the hearsay evidence of Witness 3.

The panel heard oral evidence from Witness 2, who stated that she had heard Miss Byrne refer to Resident A as a 'dirty bastard' on many occasions, stating that there were '*too many times to remember*'. The panel noted that Witness 2 stated that the term was used frequently and consistently in reference to Resident A. In her written statement, Witness 2 stated:

*'I have witnessed Deidre using the words 'dirty bastard' to describe residents in the home. She would use this sort of language around other staff members in the home, but I have not witnessed her saying it in the presence of any residents. Generally, she would make these comments when we were on our down time, sitting around having our breaks etc. Deidre would regularly use language like that to describe people, it was not uncommon. That is the type of person she is and the way she speaks.' [sic]*

In her oral evidence, in response to a panel question, Witness 2 said that the use of this term took place on a daily basis.

The panel found Witness 2's evidence to be clear, consistent, and credible. The panel also noted that there was no evidence to suggest that there was any animosity between Witness 2 and Miss Byrne that might undermine the reliability of Witness 2's evidence.

The panel also considered the evidence of Witness 3. Whilst it approached this hearsay evidence with caution, it noted that it lends support to the evidence of Witness 2 in terms

of the words alleged to have been used by Miss Byrne. Witness 3 stated that she heard Miss Byrne refer to Resident A as a 'dirty bastard' on one occasion.

In her written statement, Witness 3 stated:

*'On one morning during the handover report at approximately 7:45 am I saw Ms Byrne in the reception area sitting in the chair and talking to another nurse. Ms Byrne was the nurse in charge. I do not remember which date it was. I heard Ms Byrne referring to the Home resident (Resident A) as a "dirty bastard". There were also seven or eight HCAs present in the reception area at that time. Resident A was not present when Ms Byrne said the above words about him.' [sic]*

The panel considered the fact that Witness 3 only referred to the expression being used once did not undermine the reliability of Witness 2's evidence. It was not suggested that Miss Byrne used that expression every time at handover. Witness 3 explained that she worked different shifts from Miss Byrne.

The panel was satisfied that, although the exact time-frame relating to this charge was not specified, the evidence established that Miss Byrne was working at the Home between 16 July 2016 and 25 March 2023, and that the conduct would have occurred between December 2021, when Witness 2 started working at the Home, and 25 March 2023, when Miss Byrne resigned. The panel thus considered that the wording of the charge, 'on dates unknown' and 'on one or more occasions,' did not require greater specificity.

The panel therefore found Charge 1 proved.

## **Charge 2**

"That you, a registered nurse, whilst working at the Home:

- 2) On a date unknown, mocked one of the effects of Resident B's health condition."

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and written evidence from Witness 4.

The panel heard oral evidence from Witness 4, who described an incident that occurred during a handover report from the night staff early in the new year, around January or February 2023. The panel noted that Witness 4 stated that following a report from night staff regarding Resident B's condition, Miss Byrne began shaking and making noises in a manner that mocked the resident's symptoms. In her written statement, Witness 4 stated:

*'One morning when the staff from the previous night shift were giving me a handover report I witnessed Ms Byrne making insulting comments about Home Resident B and how Ms Byrne mocked her. Ms Byrne was mocking Resident B by shaking her own body like Resident B would do due to her health condition. I do not remember what health condition or diagnosis Resident B had.'*

*'Ms Byrne was mocking Resident B at the front desk in presence of other members of staff during the morning report hand-over. Resident B was not present when Ms Byrne insulted and mocked her. I think this happened sometime around January - February 2023, but I cannot recall the exact date. However, I do remember Ms Byrne making insulting comments and mocking as described above.' [sic]*

In her oral evidence Witness 4 described the behaviour displayed by Miss Byrne in front of colleagues as shocking and unprofessional, particularly given Miss Byrne's role as a senior nurse. The panel found Witness 4 to be a credible and reliable witness. The panel considered that her oral evidence was clear and consistent with her NMC and local statements. She was also able to provide greater detail of the incident in her oral

testimony. The panel noted that although the incident occurred three years ago, in Witness 4's oral evidence she said that she remembered the incident '*like it was yesterday*,' which was indicative of the impact that Miss Byrne's behaviour had on her. The panel accepted the clarification made by Witness 4 in her oral evidence that the mocking behaviour was only carried out by Miss Byrne at handover and not by the night staff, who had only verbally described Resident B's health condition and presentation.

The panel was satisfied that although the exact time-frame of the incident was not specified within the charge, this did not undermine the allegation. The panel was satisfied that Witness 4 was able to provide a sufficient timeframe of January - February 2023 in her oral evidence, which did not require further specificity. Accordingly, the panel found Charge 2 proved.

### **Charges 3a) and 3b)**

"That you, a registered nurse, whilst working at the Home:

- 3) Your actions at charge 1 and/or 2 were:
  - a) degrading and/or
  - b) humiliating and/or

**These charges are found NOT proved.**

The panel considered the wording of Charge 3 and the submissions made by Mr Segovia, who submitted that in relation to Charges 3a) and 3b), for conduct to be characterised as being humiliating and/or degrading, the resident would need to have been the target of humiliating or degrading behaviour in their presence. There was no evidence that the behaviour in Charges 1 and 2 took place in the presence of the residents.

In relation to Charges 3a) and 3b), the panel noted that there was no direct evidence to suggest that Resident A or Resident B had been degraded or humiliated by Miss Byrne's

actions at Charge 1 and/or 2. The panel had no evidence that, having regard to the charges in this case, Miss Byrne's use of the term 'dirty bastard' in relation to Resident A and her mocking of Resident B's symptoms occurred in their presence. In the absence of this evidence, the panel was not satisfied that these allegations could be found proved. The panel therefore found Charges 3a) and 3b) not proved.

### **Charge 3c)**

"That you, a registered nurse, whilst working at the Home:

- 3) Your actions at charge 1 and/or 2 were:
  - c) offensive"

**This charge is found proved.**

The panel considered the wording of Charge 3c) and Mr Segovia's submission that for conduct to be characterised as being offensive, the action or language does not need to be specifically related to a resident, as gestures or words can be offensive in themselves. The panel noted that the term 'offensive' is often an objective description of language or actions and was not dependent on the subjective manner in which it is received by the individual.

The panel heard and accepted evidence that Resident A required frequent changing as he had incontinence issues. In the context of Resident A, the use of the expression 'dirty bastard' would have been interpreted as the recipients of this information to mean that Resident A was still encountering the same problems.

In relation to Charge 3c), the panel accepted the oral evidence of Witness 4, who described feeling shocked by Miss Byrne's actions at Charge 2.

The panel further noted the oral and written evidence of Witness 2 and the hearsay evidence of Witness 3 regarding Miss Byrne's actions at Charge 1. The panel found Miss Byrne used the term 'dirty bastard' in relation to Resident A on one or more occasions. The panel noted Witness 2 stated in her oral evidence that Miss Byrne used the term 'dirty bastard' in reference to Resident A, '*on too many times to remember*,' and that this occurred on a daily basis.

The panel considered that Miss Byrne's repeated use of the term 'dirty bastard' in relation to Resident A and the mocking of Resident B's health condition was regarded by colleagues and would be regarded by a colleague or member of the public as offensive, regardless of whether Resident A or Resident B were present or not during the incident. The panel therefore found Charge 3c) proved in relation to Charge 1 and Charge 2.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Byrne's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, recognised its statutory duty to protect the public and maintain public confidence in the profession. It bore in mind that there is no burden or standard of proof at this stage and it therefore exercised its own professional judgement.

The panel recognised that it had to adopt a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel had then to decide whether, in all the circumstances, Miss Byrne's fitness to practise is currently impaired as a result of that misconduct.

## **Submissions on misconduct**

Mr Segovia referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’

Mr Segovia submitted that the panel would have to consider whether an act or omission by Miss Byrne that fell below the standards required of a registered nurse was serious enough to amount to misconduct.

Mr Segovia invited the panel to take the view that the facts found proved were sufficiently serious to amount to misconduct. He invited the panel to have regard to the terms of ‘The NMC Code: Professional standards of practice and behaviour for nurses and midwives 2015’ (the Code) in making its decision.

Mr Segovia submitted the specific, relevant standards where the NMC consider that Miss Byrne’s actions amounted to misconduct as being sections 1.1, 20.1 and 20.8 of the Code (2015).

## **Submissions on impairment**

Mr Segovia moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body and referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Segovia submitted that it is a matter for the panel’s judgement to consider whether there are grounds for impairment in relation to public interest and public safety. He submitted that there is also the issue of risk in relation to whether Miss Byrne’s actions put

patients at unwarranted risk of harm. He submitted that this is not a narrow case focused on clinical care, and that by engaging in offensive behaviour at handover, Miss Byrne's actions potentially set a worrying and damaging precedent to staff of how to behave, creating a risk to residents at the Home. Mr Segovia submitted that many vulnerable residents reside at the Home, where they may spend their last days, and it is the NMC's case that Miss Byrne's actions risked degrading the proper therapeutic environment.

Mr Segovia submitted that Miss Byrne has brought the reputation of the nursing profession into disrepute.

Mr Segovia submitted that Miss Byrne breached fundamental tenets of the profession through her behaviour and failed to uphold the appropriate standards expected of a registered nurse.

Mr Segovia concluded that it is the NMC's position that there is current impairment of Miss Byrne's fitness to practise on public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

### **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code and considered whether there had been a significant falling short from the standards expected of a registered nurse. The panel considered each charge individually.

The panel was of the view that Miss Byrne's actions fell significantly short of the standards expected of a registered nurse, and amount to breaches of the Code. Specifically, the following sections of the Code:

**Prioritise people**

**1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

*1.1 treat people with kindness, respect and compassion*

**Preserve safety**

**17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection**

To achieve this, you must:

*17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*

**Promote professionalism and trust**

**20 Uphold the reputation of your profession at all times**

To achieve this, you must:

*20.1 keep to and uphold the standards and values set out in the Code*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

*20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

*20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel found that each of the charges found proved were on their own sufficiently serious to amount to misconduct.

The panel found that her actions fell far below the standards expected of a registered nurse. Miss Byrne's actions in mocking a resident's symptoms in front of colleagues, were highly inappropriate and offensive, amounting to misconduct.

The panel took the view that using the term 'dirty bastard' in relation to a vulnerable resident, on a daily basis or '*too many times to remember*', as recalled by Witness 2, demonstrates a repeated pattern of offensive behaviour, indicating deep-seated attitudinal concerns and a significant departure from the standards expected of a registered nurse.

The panel noted that although there was no evidence that any actual harm was caused to residents, all of these breaches of the Code were particularly serious because they demonstrated a serious lack of respect and a potential risk of harm for residents of the Home. In the panel's judgement, this behaviour and language from a nurse in a position of authority, in the presence of more junior members of staff including healthcare assistants, fell seriously short of the conduct and standards expected of a registered nurse, amounting to misconduct.

### **Decision and reasons on impairment**

The panel then considered whether Miss Byrne's fitness to practise is currently impaired as a result of her misconduct.

The panel had regard to the NMC Guidance on Impairment (DMA-1) especially the question which states:

*'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'*

The panel considered the test approved by Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 76:

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...*

In considering these issues the panel had limited evidence as to the contextual working environment and culture at the Home and about Miss Byrne's circumstances or practice.

The panel next considered the Grant test and determined that the first three limbs of the test are engaged in this case as to the past.

The panel first considered whether residents were put at risk of harm. Miss Byrne's misconduct included use of the term 'dirty bastard' in relation to a resident on a daily basis over an extended period of time and mocking the outward symptoms of another resident's health condition. These events took place in front of other members of staff, including junior colleagues for whom Miss Byrne was responsible. The panel took the view that this behaviour continued for such a time and with such regularity that it had obvious potential to influence the working culture and attitude of other colleagues towards residents at the Home by normalising such behaviour. Many of the people who, on the evidence were present when Miss Byrne was making the remarks in relation to Resident A and mimicking

Resident B were more junior to her and the panel was of the view that consequently, the likelihood of Miss Byrne's conduct influencing the care offered to residents was all the more significant. The panel noted and accepted Mr Segovia's submission that Miss Byrne's behaviour '*degrades the proper therapeutic environment.*'

There was a clear power imbalance between Miss Byrne and those around her and the panel heard evidence that because of this, members of staff were reluctant to challenge or raise concerns at a more senior level. Although the panel accepted that no actual harm was caused, this created a significant risk of harm to residents.

It was clear from the evidence that most of the facts found proved occurred at a time of handover. Handover is a vital time for information concerning each resident to be conveyed to staff taking over for the next shift. This calls for concentration on the part of the person conveying the information and the person receiving the information. The behaviour of Miss Byrne at handover was clearly an unwelcome distraction and impacted the staff. It was likely to affect the concentration of the person conveying the information and likely to distract the person receiving the information. In any event, it set an inappropriate tone for the commencement of a shift and created risk to residents because of the distraction from important clinical matters.

Miss Byrne's misconduct clearly brought the nursing profession into disrepute. The panel took into account the evidence of Witness 2 and Witness 4, both healthcare assistants who described their reaction to seeing and hearing Miss Byrne act as she did. Members of the public and the loved ones of residents in nursing homes would expect the staff to act professionally and treat people with dignity and respect and understandably hold a diminished view of the profession if they were to think that Miss Byrne's behaviour was typical.

Having regard to the code, Miss Byrne's misconduct clearly breached fundamental tenets of the nursing profession relating to prioritising people, preserving safety and promoting professionalism and trust.

The panel therefore concluded that limbs a, b, and c of the Grant test are engaged in respect of Miss Byrne's misconduct.

The panel next considered the case of *Cohen v GMC* in which the Court addressed the issue of impairment with regard to the following three considerations:

- a. *Is the conduct that led to the charge easily remediable?*
- b. *Has it in fact been remedied?*
- c. *Is it highly unlikely to be repeated?*

The panel also considered the factors set out in the NMC Guidance on Insight and strengthened practice (FTP-15).

The panel first considered whether Miss Byrne's misconduct is capable of being addressed. In the NMC Guidance – Can the concern be addressed (FTP-15a), the panel noted the following paragraph:

*'In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.'*

The panel considered that the misconduct in this case, along with the absence of any expression of remorse or regret indicates significant attitudinal concerns. Consequently, the panel was of the view that Miss Byrne's misconduct may be capable of remediation, however, it recognised that such conduct is more difficult to remediate due to its serious attitudinal nature. The panel noted that attitudinal concerns are particularly difficult to remedy where there is a lack of insight. The panel determined that there was no information to suggest that Miss Byrne was capable of remedying her misconduct.

The panel then went on to consider, in any event, whether the concerns have been addressed and remediated. It had regard to the NMC Guidance – Has the concern been addressed (FTP-15b).

The panel had no evidence of insight or remorse. The panel therefore considered that her behaviour demonstrated ongoing deep-seated attitudinal issues.

The panel had regard to two training reports submitted by Miss Byrne. These reports pre-date the date of her resignation from the Home and are in the form of lists of training sessions between Feb 2022 – January 2023. The reports give no detail of the content of training undertaken by Miss Byrne and the panel had no information as to how the sessions are relevant to the concerns in this case or how they would be used to evidence strengthened practice. Having regard to the headings for each training session listed in the reports, the panel noted that a small number appear broadly relevant to the facts found proved. However, in the absence of further detail the panel was unable to give any weight to these reports in its consideration of remediation. The panel noted that it has also not received any evidence of testimonials from Miss Byrne's colleagues at the Home or from previous employers.

The panel has not received any evidence of reflection and insight on the part of Miss Byrne. There have been no expressions of apology, remorse or regret. The panel saw no evidence of strengthened practice or commitment to acting differently in the future.

The panel therefore determined that Miss Byrne's misconduct has not been remediated. It could not conclude that Miss Byrnes misconduct is highly unlikely to be repeated. On the contrary in this case, the panel was of the view that there is a significant risk of repetition. Accordingly, the panel determined that limbs a, b and c of the *Grant* test are engaged as to the future.

The panel was of the view that the risk of repetition shows an ongoing risk to residents and patients. The panel therefore concluded that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel considered that a member of the public would be very concerned to hear of Miss Byrne's behaviour and language used in relation to residents.

The panel had regard to the serious nature of Miss Byrne's misconduct and the public protection issues it had identified. It determined that public confidence in the profession would be seriously undermined if a finding of impairment were not made in this case. The panel was also of the view that a finding of impairment is needed to declare and uphold proper standards in the nursing profession.

Having regard to all of the above, the panel was satisfied that Miss Byrne's fitness to practise is currently impaired on both public protection and public interest grounds.

### **Sanction**

Having determined that Miss Byrne's fitness to practise is impaired by reason of misconduct, the panel went on to consider sanction. The panel has decided to make a striking-off order. It directs the registrar to strike Miss Byrne off the register. The effect of this order is that the NMC register will show that Miss Byrne has been struck-off the register.

In reaching its decision on sanction, the panel had regard to the submissions of Mr Segovia and the Sanctions Guidance (SG) issued by the NMC. The panel heard and accepted the advice of the legal assessor.

### **Submissions on sanction**

Mr Segovia reminded the panel of their decision and rationale on misconduct and impairment and the highlighted Miss Byrne's repeated pattern of behaviour and the fundamental deep-seated attitudinal issues identified.

Mr Segovia addressed the panel on aggravating features. He submitted that the NMC did not identify any mitigating features. He submitted that the NMC's position is that a striking-off order is proportionate and invited the panel to impose a striking-off order.

### **Decision and reasons on sanction**

In considering sanction, the panel bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Lack of insight into failings
- A pattern of repeated misconduct over a period of time
- The misconduct put vulnerable residents at risk of harm
- Abuse of a position of trust and responsibility which made it difficult for staff to report Miss Byrne's behaviour

The panel was unable to identify any mitigating factors in this case.

In considering seriousness, the panel had regard to NMC Guidance SAN-2. The panel considered this case to be particularly serious. It involved repeated poor behaviour in relation to vulnerable residents at the Home. Miss Byrne was directly responsible for the well-being and care of residents in the Home, however, she demonstrated complete disrespect towards residents and disregarded her professional duty to ensure the safety and dignity of those under her care. The panel was of the view that these concerns are so serious that they would have a particularly adverse impact on the public's view of the nursing profession.

The panel then began considering sanction in ascending order.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that this would not deal with the gravity of the conduct found proved, and it would be neither proportionate, nor in the public interest to take no further action as it would not show the public how seriously matters such as those proved are taken.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Byrne's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.*' The panel considered that Miss Byrne's misconduct is not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case as it would not protect the public and is not sufficient to mark the seriousness of the charges. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Byrne's registration would be a sufficient and appropriate response. The panel noted that a conditions of practice order is typically imposed in cases where the regulatory concerns

can be remediated by a registrant's strengthened clinical practice through learning and retraining. However, the panel determined that in Miss Byrne's case, the safety of residents and the deep-seated attitudinal concerns relating to her misconduct cannot be addressed by a conditions of practice order.

The panel is of the view that there are no practical or workable conditions that could be formulated in relation to public safety, and given the nature of the charges in this case and the misconduct identified, these are not concerns that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Byrne's registration would not adequately address the seriousness of this case and would not protect the public. Additionally, the panel had no indication that Miss Byrne was motivated to comply with a conditions of practice order.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

Whilst there is no evidence of repetition of the conduct, none of the other factors identified above are engaged in this case. This was not a single incident of misconduct. There is evidence of Miss Byrne displaying deep-seated personality or attitudinal issues, and the panel had no evidence of insight, remediation or strengthened practice. Accordingly, the panel has identified that there is a significant risk of repetition such that a suspension order is not appropriate in this case.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering a striking-off order, the panel took note of the following from the SG which outlines key questions when considering a striking-off order:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel is satisfied that all three bullet points are engaged. Miss Byrne's actions raise fundamental questions about her professionalism and are incompatible with her continued registration. The panel is of the view that Miss Byrne's actions were serious and to allow her to remain on the register would affect public confidence in the nursing profession and the NMC as a regulator. Striking-off is the only sanction sufficient to protect residents and maintain professional standards. It would send a clear message that such behaviour is unacceptable.

This will be confirmed to Miss Byrne in writing.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Segovia. He invited the panel to impose an interim suspension order for a period of 18 months on the grounds of public protection and in the public interest. He submitted that as the striking-off order will not take effect until after the 28-day period or until an appeal is disposed of or withdrawn, an interim order is necessary and proportionate to cover this intervening period to protect the public and meet the public interest in light of the serious concerns found.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. The panel determined that the charges found proved are so serious that they warrant a striking off order, therefore Miss Byrne's practice needs to be restricted during the appeal period.

Given its earlier decisions and the substantive order imposed, the panel determined that this restriction should be an interim suspension order for a period of 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking-off order 28 days after Miss Byrne is sent the decision of this hearing in writing.

That concludes this determination.